THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION Nos.7336, 3911,4037,
4045, 3783 and 3910 of 2007

Date: 20.04.2007

W.P.No.7336 of 2007
Between:

E.Nagalakshmi.
....Petitioner

And

The Deputy Collector.
....Respondents

W.P.No.3911 of 2007
Between:

Smt.Bharam Kalyan Kaushik
....Petitioner

And

The Inspector General of Stamps & Registration
And another.
....Respondents

W.P.No.4037 of 2007
Between:

Smt.Bharam Krishna Kishore
....Petitioner

And

The Inspector General of Stamps & Registration
And another.
....Respondents

W.P.No.4045 of 2007
Between:

Bharam Kalyan Karthik
....Petitioner

And

The Inspector General of Stamps & Registration
And another.

....Respondents

W.P.No.3783 of 2007

Between:

Smt.Bharam Nivedita

....Petitioner

And

The Inspector General of Stamps & Registration
And another.

....Respondents

W.P.No.3910 of 2007

Between:

Bharam Krishna Kishore and another.

....Petitioners

And

The Inspector General of Stamps & Registration
And another.

....Respondents

COMMON ORDER:

In this batch of writ petitions, common questions of fact and law arise. Hence, they are disposed of, through a common order.

The petitioners have presented their respective documents for registration before the registering authorities concerned, duly paying the prescribed stamp duty and registration fee. The documents were admitted to registration and were released to them.

The Deputy Collector (Flying Squad), the second respondent, had inspected the records of the respective registering authorities and entertained a doubt as to the adequacy and correctness of the stamp duty and registration fee paid on the documents. Accordingly, he issued show cause notices to the petitioners directing them to explain as to why they shall not be required to pay the difference of the stamp duty and registration fee indicated therein.

The petitioners submitted a representation to the second respondent requesting him to furnish the copies of the Government Orders. Even before the petitioners submitted their explanations

after receiving such Orders, the second respondent issued notices for prosecution under Section 27 of the Indian Stamp Act (for short 'the Act') read with Section 64 thereof. The petitioners challenge the same.

The petitioners contend that even before they submitted their explanations, the second respondent had issued prosecution notices, that too, without passing any order in pursuance of the show cause notices. Several other grounds are also urged.

The second respondent filed a detailed counter-affidavit narrating the circumstances that led to issuance of prosecution notices. He states that he has conducted the spot inspection as contemplated under relevant provisions of law and issued impugned notices, on finding that there is substantial variation in the plinth areas and other aspects on the documents.

Heard the learned counsel for the petitioners and the learned Government Pleader for Revenue.

Through the impugned prosecution notices, the second respondent required the petitioners to pay the amount indicated therein, or face prosecution. The obligation of the petitioners to pay the said amount would have arisen, if only, an order was passed by the second respondent in exercise of the powers under Section 41-A of the Act. The second respondent had chosen to issue show cause notices requiring the petitioners to submit their explanations. However, he did not wait till the explanations are submitted. Even if there was any default on the part of the petitioners in submitting the explanations, he was under obligation to pass an order, supported by reasons, as contemplated under Section 41-A of the Act. The question of the second respondent requiring the petitioners to pay the differential amount,

or face prosecution, in the absence of any order passed under Section 41-A of the Act, did not arise.

On this short ground, the writ petitions are allowed and the impugned notices are set aside. It is, however, left open to the second respondent to pass orders under Section 41-A of the Act, duly giving adequate opportunity to the petitioners to submit explanations, as well as to represent their cases by appearing before him. To avoid further uncertainty, it is directed that it shall be open to the petitioners to submit their explanations, within two (2) weeks from today. On receipt of the same, the second respondent shall issue notices of hearing to the petitioners and decide the matter thereafter. There shall be no order as to costs.

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20.04.2007

kdl